

**RECESSED MEETING OF THE FAUQUIER COUNTY BOARD OF ZONING  
APPEALS**

September 2, 1999

The Fauquier County Board of Zoning Appeals held a recessed meeting on Thursday, September 2, 1999, at 1:00 P.M. in the Meeting Room of the Warren Green Building, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. William Rider, Chairman; William Barr, Vice Chairman; Ms. Barbara Wilson, Secretary; Mr. Eugene Lofdahl, Dr. James Branscome and Mr. John Meadows. Also present were Mrs. Carolyn G. Bowen, Zoning Administrator; Mr. Paul McCulla, County Attorney; Mr. Don Margraf, Assistant Zoning Administrator, and Mrs. Beverly Pullen, Zoning Office Technician. The member absent was Mrs. Peg Mailler.

**EXECUTIVE SESSION**

On the motion made by Mr. Barr, and seconded by Dr. Branscome, and pursuant to §2.1-344 (a)(7) of the Code of Virginia, I move to go into Executive Session for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to Appeal #44303 Salahi Family Limited Partnership; Appeal #44428 Frederick and Lindy Hart and others; and Appeal #44511 Jacquelyn T. Murri.

The motion carried unanimously.

The following persons were excused from the executive session and left the meeting: Mrs. Carolyn G. Bowen, Zoning Administrator, Mr. Don Margraf, Assistant Zoning Administrator, and Mrs. Beverly A. Pullen, Zoning Office Technician.

The Fauquier County Board of Zoning Appeals, having adjourned into Executive Session this day for the purposes stated in the resolution authorizing such Session, does hereby certify that to the best of each member's knowledge (I) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and (II) only such public business matters as were identified in the motion by which the Executive Session was convened, were heard, discussed or considered in the Executive Session.

AYES: Dr. Branscome, Mr. Barr, Mr. Rider, Ms. Wilson, Mr. Lofdahl and Mr. Meadows.

NAYS: None

ABSTENTION: None

ABSENT: Ms. Mailler

**MINUTES OF  
FAUQUIER COUNTY BOARD OF ZONING APPEALS**

September 2, 1999

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, September 2, 1999, at 2:00 P.M. in the Meeting Room of the Warren Green Building, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. William Rider, Chairman; William Barr, Vice Chairman; Ms. Barbara Wilson, Secretary; Mr. Eugene Lofdahl, Dr. James Branscome and Mr. John Meadows. Also present were Mrs. Carolyn G. Bowen, Zoning Administrator; Mr. Paul McCulla, County Attorney; Mr. Don Margraf, Assistant Zoning Administrator, and Mrs. Beverly Pullen, Zoning Office Technician. The member absent was Mrs. Peg Mailler.

**MINUTES**

The minutes of August 5, 1999 were deferred until the October 7, 1999 meeting.

**LETTERS OF NOTIFICATIONS**

**PUBLIC NOTICE** Mrs. Bowen stated that to the best of her knowledge, the cases before the Board of Zoning Appeals for a public hearing have been properly advertised, posted, and letters of notification sent to adjoining property owners.

**APPEAL #44303**

**SALAHY FAMILY LIMITED PARTNERSHIP (OWNER)**

The appeal filed by the Salahi Family Limited Partnership was continued from the August meeting. The appeal was to certain determinations made by the Zoning Administrator in a letter dated May 26, 1999. The owners are appealing decisions regarding an open house held on May 29, 1999, the number of persons that may attend an open house, the holding of an open house and a Class C event at the same date and time, and what constitutes the tasting or sampling of wine for purpose of using a farm structure under the Zoning Ordinance. The subject property is identified as PIN #5998-87-0439-000, located at 14141 Hume Road (State Route 635) near Hume, containing approximately 99.72 acres and is zoned RA (Rural Agriculture), Marshall District.

Mrs. Bowen stated that a letter was received from John Foote, Attorney for the Salahi Family Limited Partnership, confirming that they have no objection to the BZA continuing the appeal until the October 7<sup>th</sup> meeting.

On the motion made by Ms. Wilson and seconded by Mr. Barr it was moved to continue the appeal until the October 7, 1999 meeting.

The motion carried unanimously.

**APPEAL #44428**

**FREDERICK AND LINDY HART, KEVIN AND JENNIFER HANDFORD, ET ALS**  
**(APPELLANTS)**

The Appellants' appeal to a determination made by the Zoning Administrator, dated May 26, 1999 was continued from the August meeting. The appeal is filed with regard to the Salahi Family Limited Partnership's property, The Oasis Winery, located on Hume Road, Marshall District. The appellants have appealed a Zoning Administrator's determination that wine tastings are permitted by right, as part of an agricultural use, and that depending upon circumstances it may be permissible to hold an event at the winery, not governed by special exception approval.

Mrs. Bowen stated that a letter was received from Sarah Hall, Attorney representing the appellants in the above appeal, indicating that her clients have no objection to the deferral of their appeal until the October 7, 1999 meeting.

On the motion made by Ms. Wilson, and seconded by Mr. Barr, it was moved that action on this appeal be deferred until October 7, 1999.

The motion carried unanimously.

**SPECIAL PERMIT #44489**

**WANDA F. JACOBS (OWNER)**

Mrs. Wanda F. Jacobs has filed a request for special permit approval to construct a single family detached dwelling on each parcel, identified as PIN #6969-48-9563-000, PIN #6969-48-9413-000, and PIN #6969-48-9437-000, located on Salem Avenue (State Route 1006) zoned C-1 (Commercial) in Marshall District.

Mr. Margraf reviewed the staff report stating that the public hearing was closed and the matter was continued from the August meeting.

Ms. Wilson stated that she was not present at the September 2, 1999 meeting, but has read the material and listened to the tape of the meeting, and further stated available to participate.

Mr. Rider stated that Ms. Wilson had satisfied the requirements. He further asked Ms. Wilson if she had any comments or questions regarding this request.

Ms. Wilson stated that in the previous application (#39362) a special permit was denied for single family dwellings. She further stated that since that application, it appears to her that the planned commercial development is taking place on the south east side of Marshall, not in this

area, and that since there is residential on one side of this property, maybe the BZA needed to consider this request.

Mr. Rider stated that he felt the commercial property owner in the previous application concerns were raised about mixing commercial and residential, and he felt it was a valid point.

Mr. Lofdahl stated that there is an existing residence across from the commercial property.

Mr. Meadows stated that there is a mixed use, however he felt there are advantages to this request, as the adjacent property owners will be looking at single family dwellings, as opposed to a ten-unit apartment building for multi-family use.

Mr. Barr stated that he agreed with Ms. Wilson and felt the use would be compatible

Mr. Rider stated that he felt if the request is approved, the applicant should have to meet VDOT requirements.

Mr. Fallon was present on behalf of his client, Wanda Jacobs. He stated that his client would have no objection to building the street to VDOT standards and having that imposed as a condition.

On the motion made by Dr. Branscome, it was moved to deny special permit #44489, after due notice and hearing as required by Code of Virginia §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will adversely effect the use or development of neighboring properties.
2. It is not in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does not conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will not be compatible with the neighborhood in which it is to be located.
4. The application does not comply with the specific standards which apply to the use in question, namely Section 5-103, Standards for All Residential Uses in C-1 and CV District.
5. The applicant has other reasonable use of his property.

The motion failed.

On the motion made by Mr. Lofdahl, and seconded by Mr. Meadows, it was moved to grant special permit #44489, after due notice and hearing, as required by Code of Virginia §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely effect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards which apply to the use in question, namely:

**Section 5-103 Standards for All Residential Uses in C-1 and CV District**

In addition to the standards set forth in Section 006 above, all residential uses shall satisfy the following standards:

1. While the C-1 and CV Zoning Districts are intended to accommodate a mixture of commercial and residential uses, and to recognize the mixed-use character of many village centers in the County, residential uses allowed by special permit in such districts shall be of such scale as to avoid conflict with existing and potential commercial uses in the district where located.
2. Such uses shall be subject to the use regulations set forth in Part 4 of Article 3 for conventional developments in the zoning districts indicated:

<b><u>Dwelling Unit Type</u></b>	<b><u>Zoning District</u></b>
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Single Family, Detached	R-4
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5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance:

(1) Compliance with Virginia Department of Transportation standards for extending Salem Avenue across the frontage of these three lots.

The vote was 4-2 in favor of granting the special permit. Mr. Rider and Dr. Branscome voted in opposition.

**SPECIAL PERMIT #44505**

**ROY L. AND LOU ANNE BOATWRIGHT (OWNERS)**

**HENRY MERCKLI (TENANT)**

Mr. and Mrs. Boatwright and Mr. Merckli wish special permit approval to allow a truck and heavy equipment rental, sales and service and wholesale facility for the sale of bulk mulch, topsoil, and other related landscape materials. The subject property is identified as PIN #7906-00-9413-000, containing 4.615 acres, and is zoned I-2 (Industrial) and located at 5391 Telephone Road (State Route 838) and Lee Highway (State Route 15 & 29), in Scott District.

Mr. Margraf reviewed the staff report. The public hearing was continued from the August meeting. He further stated that staff received a letter from Mr. Ben Tissue, Engineer, on behalf of Mr. Boatwright, listing self-imposed recommended conditions for this request. Mr. Margraf read the conditions offered, as well as staff's changes to the proposed conditions, to the BZA.

Mr. Fallon, Attorney for Mr. Boatwright, stated that his client is in agreement with staff's changes to the proposed conditions, with the exception of the height limitation of the mulch pile to ten (10') feet. As offered by Mr. Boatwright, the proposed height limitation of fifteen (15') feet was in keeping with safety factors regarding combustion, and he asked if the BZA would consider increasing this condition to twelve (12') or fourteen (14'), as he felt ten (10') feet is too low.

Mrs. Bowen stated that a letter was received from Phil Myer, regarding the safety issues of storing and stockpiling mulch. She further stated that although Mr. Myer does not place a height limitation on the mulch piles, he does indicate that the piles should be kept as small as possible to prevent spontaneous combustion.

Mr. Barr asked Mr. Fallon for some reassurance that the screening and other conditions required will be followed through to improve the site appearance.

Mr. Fallon stated the site plan has been filed, and assuming that conditions are not placed on the permit that were not contemplated in the site plan, then the site plan approval process can begin immediately and move forward. He further reminded the BZA that should the process not move forward, Mrs. Bowen could issue a cease and desist order at any time. He further stated that he and his client, Mr. Boatwright are committed to getting this accomplished.

Ms. Wilson asked Mr. Fallon if he anticipated site plan difficulties.

Mr. Fallon stated that he believes Mr. Tissue is a very competent engineer and the plans that have been submitted substantially comply with site plan requirements.

Mr. Bowen stated that since the last meeting, the applicants have moved forward and done everything possible to proceed with their application and move on with their site plan.

Mr. Rider asked if anyone wished to speak regarding this request.

No one spoke.

Ms. Wilson stated that due to her absence at the last meeting, she has listened to the tape and reviewed the material and has visited the property and wished to make a motion.

On the motion made by Ms. Wilson and seconded by Mr. Lofdahl, it was moved to grant special permit #44505, after due notice and hearing, as required by Code of Virginia §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely effect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance:
  1. The height of the mulch pile will be limited to thirteen (13') feet.
  2. The lighting shall be in conformance with Article 9 Performance Standards.
  3. The number of vehicles used for parts shall be limited to fifteen (15) vehicles and shall be completely screened by view by non-deciduous.
  4. All proposed trees (white pines) shall be a minimum of six (6) feet in height on top of the three (3) foot berm.
  5. Hours of operation will be limited to Monday through Saturday, 7:30 A.M. to 8:00 P.M., except for emergencies.
  6. The special permit is granted for three (3) years.
  7. The special permit does not transfer with title should the property be sold.

The motion carried unanimously.

#### **APPEAL #44511**

#### **JACQUELYN T. MURRI (OWNER)**

Jacquelyn T. Murri filed an appeal to a determination made by Zoning Administrator in a letter dated June 18, 1999, that the owner is operating two businesses from the site in violation of the Zoning Ordinance. The subject property is identified as PIN #6982-09-8036-000, located at 8716

Lees Ridge Road (State Route 684) near Warrenton, Virginia, containing approximately 3.277 acres and is zoned RA (Rural Agriculture) in Marshall District.

Mrs. Bowen reviewed the appeal filed by Ms. Murri.

Mr. Robin Gulick, Attorney for Ms. Murri, spoke in representation of the Appellant. He stated that Ms. Murri wished to withdraw her request for an appeal.

On the motion made by Mr. Barr and seconded by Mr. Lofdahl, it was moved to strike this item from the agenda.

The motion carried unanimously.

**SPECIAL PERMIT #44535**

**CATLETT VOLUNTEER FIRE COMPANY (OWNER)**

Applicant is requesting special permit approval to hold turkey shoots on property identified as PIN #7922-93-4822-000, located at 3447 Catlett Road in Catlett, Virginia, containing approximately 9.98 acres and is zoned Commercial 1, in Cedar Run District.

Mr. Margraf reviewed the staff report and stated the a site visit was conducted earlier. He stated that the Fauquier County Board of Supervisors approved a Zoning Ordinance Text Amendment to allow turkey shoots and other similar activities in the C-1 Zoning District by special permit approval from the Board of Zoning Appeals. He further stated that this request is to hold turkey shoots on Saturday evenings from September through March from 6:00 P.M. to 10:00 P.M. He stated that VDOT, WSA, and the Fauquier County Health Department take no objection to this request, however the Health Department has requested that the applicant provide adequate sewage proposal in the form of one portable toilet per 100 people, with a minimum of one privy being provided.

Mr. Raymond Shrock, Fire Chief, spoke on behalf of the Catlett Volunteer Fire Company. He stated that they wanted to hold turkey shoots as a fundraiser.

Mr. Rider stated that during the site visit he noticed the hay bales in the target area, and wanted to know if there would be a more permanent target area.

Mr. Shrock stated that at this time there were no plans for a permanent structure, if required they would be willing to have a permanent structure, but at this time they want to see if the turkey shoots will be a good fundraiser.

Mr. Rider stated concerns with safety, and stated that the hay bales may not be sufficient to back up the target area.

Mr. Shrock stated that he understood the safety concerns and that only stock shotguns with 36-inch barrels being the longest barrel permitted. He further stated that #8 bird shot is used and the shoots are closely supervised with volunteer firemen. He indicated that the Fire Company



supplies the shells used at the shoots and as each shooter lines up to shoot, a shell is inserted into the barrel.

Mr. Lofdahl asked if turkey shoots had ever been held at the property.

Mr. Shrock stated that yes one was held last September, before they were aware that approval was needed. He further stated that about 25 people were present and it was very profitable. He also stated that before he was a member of the Fire Company, he understands that turkey shoots were held in the past.

Mr. Barr asked where the pellets fall beyond the hay bales.

Mr. Shrock stated that there is a green wagon that sits beyond the hay bales, he indicated that the pellets do not travel that far.

Mr. Barr inquired as to the noise generated by the turkey shoots.

Mr. Shrock stated that the shooting takes place within an open building and helps contain some of the noise, the hay bales also help, and the woods beyond the target area help to buffer as well. He stated that he had spoken with neighbors, Mr. Charlie Fincham and Ms. Baker, and they do not have any objections to the turkey shoots.

Mr. Rider asked if anyone wished to speak regarding this request.

Mr. Keith Arms, Volunteer Fireman, spoke in support of the request. He stated that the inside of the building used for shooting has acoustic ceiling tiles that help absorb some of the noise. He further stated that prior to holding the turkey shoots they went door to door and spoke to the neighbors and there were no negative responses.

On the motion made by Mr. Barr and seconded by Mr. Meadows, it was moved to grant special permit #44535, after due notice and hearing, as required by Code of Virginia §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely effect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards which apply to the use in question, namely:

**5-804 Standards and Time Limits for Carnival, Circus, Festival, Fair, Horse Show, Dog Show, Steeplechase, Music Festival, Turkey Shoot, Sale of Christmas Trees and other Seasonal Commodities, and other Similar Activities**

In addition to the general standards set forth in Section 006 above, the following standards shall apply:

1. A temporary special permit may be issued for a period not to exceed twenty-one (21) consecutive days in Residential and Rural Zoning Districts and one (1) year in Commercial and Industrial Districts.
  2. All permitted activities in a Residential or Rural Zoning District shall be sponsored by a volunteer fire company, local chamber of commerce, veterans' organization, service club, civic organization, church or religious organization, sports or hunt club, charitable, educational or nonprofit organization or recognized chapter thereof whose principal administrative offices are located within the County.
  3. Where the activity is a circus, fair or carnival, and the owner of the circus, fair or carnival is an entity other than the sponsoring organization, the sponsoring organization shall furnish the Zoning Administrator the name and address of the owner or owners of the circus, fair or carnival.
  4. The sponsoring organization shall furnish the Health Director information as to sanitary arrangements and facilities to be used by the public and employees, and the Health Director shall advise the Zoning Administrator that such arrangements and facilities will be adequate if properly used and maintained.
  5. No temporary special permit shall be issued unless adequate provision is made for off-street parking and loading requirements.
  6. In addition to the requirements of this Ordinance, a carnival, circus, sideshow, dog and pony show, trained animal show, menagerie, musical or entertainment festival, or any other show, exhibition or performance similar thereto, shall produce a County license therefore in accordance with the provisions of Chapter 3 of the Code.
  7. No such use shall be permitted except on a lot fronting on, and having direct access to, a road designated as a major collector (or higher) in the Comprehensive Plan unless the Board of Supervisors or the Board of Zoning Appeals finds that the type and amount of traffic generated by the facility is such that it will not cause an undue impact on the neighbors or adversely affect safety of road usage. In no case shall alternative frontage and access be onto less than a rural minor collector or urban local road as designated in the Comprehensive Plan.
5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to

secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance:

1. The special permit is granted for a period of one (1) year.
2. The hours of the turkey shoots are 6:00 P.M. to 10:00 P.M., to be held on Saturday from September 1999 through March 2000.

The motion carried unanimously.

#### **VARIANCE #44600**

#### **BEALETON PRESBYTERIAN CHURCH TRUSTEES (OWNER)**

The Owners are requesting a variance to the front yard to allow the construction of a front porch with a handicapped ramp. The addition would be located 32.5 feet, wherein the Zoning Ordinance requires 50 feet from the centerline of Schoolhouse Road (State Route 661). The subject property is identified as PIN #6899-22-5849-000, containing approximately .50 acre, and is zoned Residential-4, in Lee District.

Mr. Margraf reviewed the staff report and stated that a site visit was made earlier. He stated that WSA, VDOT and the Health Department have no objection to this request. He further stated that the Health Department indicated a trap door should be installed on the porch, as the existing well would be under the proposed addition. He stated the existing church is one hundred years old and already extends twelve (12) feet into the existing front yard setback and is considered to be non-conforming.

Rev. Horace Downey, Pastor, spoke regarding this request, he showed the BZA members a drawing of the church with the proposed porch and ramp. He stated that the purpose of this porch and ramp is to have a safer entrance into the church from the parking lot.

Mr. Rider asked if anyone wished to speak regarding this request.

On the motion made by Mr. Meadows, and seconded by Mr. Barr, it was moved to grant variance #44600, based on the Board's findings, after due notice and hearing, as provided by §15.2-2204 of the Code of Virginia:

1. The property was acquired in good faith; and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property because of the need for a ramp to access the church.
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of:
  - (a) the exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the Ordinance;

- (b) exceptional topographic conditions or other extraordinary situation or condition of the property;
- (c) exceptional topographic conditions or other extraordinary situation or condition of property immediately adjacent thereto;

5. The size or shape, exceptional conditions, or extraordinary situation which result in the hardship or restrictions on the use of the applicant's property are: *(specific findings as to a, b, or c above)*:

6. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.

7. The strict application of the Ordinance will produce undue hardship.

8. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.

9. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

10. The minimum variance that is necessary to afford relief is to allow the minimum front yard setback requirement of fifty (50) feet to be reduced to 32.5 feet from the centerline of Schoolhouse Road (State Route 661) for a proposed porch with a handicapped ramp to be constructed to the existing church.

The motion carried unanimously.

#### **VARIANCE #44637**

#### **ROBERT N. AND PATRICIA E. SWAIN (OWNERS)**

The owners are requesting a variance for a proposed addition to their dwelling. The proposed addition would be located five (5') feet from a side property line, wherein the Zoning Ordinance requires fifteen (15') feet. The subject property is identified as PIN #6994-18-3803-000, containing approximately 29,626 square feet, and is zoned Residential-1 (Cluster), located at 6289 Ghadban Court off of Cedar Run Drive (State Route 1405), in Center District.

Mr. Margraf reviewed the staff report and stated that a site visit was conducted earlier. He further stated that the existing dwelling was constructed in 1982 and the side setback at that time was ten (10) feet for side yards. He further stated that the applicant is seeking the variance due to the topography, narrowness and shape of the subject property. Mr. Margraf indicated that WSA was unable to determine if this proposed construction will require new service or increase the use, VDOT has no objection to this request, and staff is awaiting comments from the Health Department.

Mr. Robert Swain was present in support of this request. He stated that the purpose of this variance request is to provide a bedroom and full bathroom for his father, who is handicapped and needs additional space to maneuver his wheelchair. He further stated that the adjacent

neighbors, Wayne and Theresa Howell have furnished a letter stating they do not object to this request.

Ms. Wilson asked Mr. Swain about the location of his property boundaries.

Mr. Swain explained that the Howell's property borders his property, as well as common area ground which he maintains, but is owned by the Cedar Run Homeowners Association.

Mr. Meadows asked Mr. Swain if he had considered purchasing additional acreage from the adjoining property owners, the Howell's.

Mr. Swain stated that he had spoken with the Howell's and they had not expressed any interest.

Mr. Barr asked about the location of the drainfield and reserve area.

Mr. Swain stated that the drainfield and reserve area is located in his backyard just beyond the deck.

Mr. Barr stated that the property does have an unusual shape.

Mrs. Bowen stated that the zoning regulations have changed since the home was built and have become greater. She further stated that the presence of the drainage area and pond, the slope of the land, and the location of the drainfield and reserve area take up the entire back yard.

Mr. Rider asked if anyone wished to speak regarding this request.

No one spoke.

On the motion made by Mr. Meadows, and seconded by Mr. Barr, it was moved to grant variance #44637, based on the Board's findings, after due notice and hearing, as provided by §15.2-2204 of the Code of Virginia:

1. The property was acquired in good faith; and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property because of the location of the drainfield and reserve area
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of:
  - (a) the exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the Ordinance;
  - (b) exceptional topographic conditions or other extraordinary situation or condition of the property;
  - (c) exceptional topographic conditions or other extraordinary situation or condition of property immediately adjacent thereto;

5. The size or shape, exceptional conditions, or extraordinary situation which result in the hardship or restrictions on the use of the applicant's property are: (*specific findings as to a, b, or c above*):

6. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.

7. The strict application of the Ordinance will produce undue hardship.

8. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.

9. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

10. The minimum variance that is necessary to afford relief is:

1. Ten (10) feet to a side property line.

The motion carried unanimously.

#### **CONSIDERATION OF REVOCATION OF SPECIAL PERMIT #43647 CURTIS R. AND SHELIA A. HANSEN**

Mr. and Mrs. Hansen have requested a hearing in accord with Section 5-015 of the Zoning Ordinance in response to a letter sent to them considering the Board of Zoning Appeal's vote to consider revoking part of a special permit issued on March 4, 1999 to Mr. and Mrs. Hansen to hold auctions on their property located on John S. Mosby Highway, Upperville, Marshall District.

Mrs. Bowen reviewed the request she had made at last month's meeting regarding the consideration of revocation of Special Permit #43647 with regard to auctions. She stated that notice was sent to Mr. and Mrs. Hansen in accordance with the Fauquier County Zoning Ordinance, and that Mr. and Mrs. Hansen requested that a hearing be held today. She further stated that after the August meeting, there were two auctions held at 4:00 P.M., one on August 7<sup>th</sup> and another August 21<sup>st</sup>.

Mr. Hansen spoke regarding this matter. He stated that he has rented building J to Calvin Neal since June of 1998, and Mr. Neal holds auctions at the property. He stated that he feels caught in the middle, and doesn't understand, that Mr. Neal has held too many auctions and too early, in violation of the permit. He stated that he is retired and rents the property to Mr. Neal and allows him use of the property. He stated that he has no intentions of policing the lease or Mr. Neal. He stated that under the lease agreement he has with Mr. Neal he is to comply with zoning and the County regulations. He stated that Mr. Neal could speak to the times and dates of the auctions that had been held. Mr. Hansen stated that he recalled that at the time the permit was

issued the BZA stated that they did not care what time the auctions started, as long as they were over by 9:00 P.M. He stated he felt caught in the middle of interpretations by the zoning law.

Mr. Rider stated that the lease agreement that Mr. Hansen has with Mr. Neal, does not alleviate the responsibility that Mr. Hansen has, to ensure that the conditions of the permit are abided by.

Mr. Hansen stated that he understood, but he felt his property rights were being violated, as well as his civil rights. He further stated that he cannot testify as to the time and dates of the auctions.

Mr. Rider stated that Mr. Neal is not abiding by the conditions of the permit.

Mr. Barr stated that at last month's meeting Mr. Neal was present and aware of the conditions of the permit.

Mr. Calvin Neal spoke regarding the revocation of the special permit. He stated that he was not given a copy of the approval letter of the March 4, 1999 hearing until August 2, 1999. He stated that he has started the auctions before 5 P.M., but thought it was not a problem. He further stated that the auctions generally end around 9-9:15 P.M., and he had thought this was more of concern to the BZA and not the starting time. He stated that he had tried to abide by the rules and conditions of the permit.

Dr. Branscome asked to be excused from the meeting and Mr. Rider acknowledged Dr. Branscome.

Mr. Rider asked if anyone wished to speak regarding this matter.

Ms. Marybelle Clark, an adjoining property owner, spoke in favor of revoking the permit. She stated that on March 4, 1999 when the special permit was renewed, she thought the conditions were clear. She stated that the auctions held have exceeded the number permitted, violated the hours, and that traffic was excessive as the auctions have continued past 9:00 P.M. She stated that the fence as required by the conditions was installed and is very nice.

Mr. John Mazlett, an Upperville resident, also spoke in favor of revoking the permit. He stated that the conditions of the permit were very clear and Mr. Neal has continued to violate the conditions of not only the current permit, but the previous permit as well. He stated that the decision of the BZA affects other property owners in the Upperville community.

Mr. Rider stated that he is reluctant to take away a property owners rights.

Mr. Meadows stated that there has not been a history of abiding by the rules or conditions of the permit.

On the motion made by Mr. Meadows and seconded by Mr. Barr, it was moved to revoke special permit #43647.

The motion carried, and the vote was 4-1, with Mr. Rider in opposition.

ADJOURNMENT     There being no further business before the Board, the meeting adjourned  
at  
4:45 P.M.

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William Rider, Chairman

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Barbara Wilson, Secretary

Copies of all files and materials presented to the Board are attached to and become a part of these minutes. A tape recording of the meeting is on file for one year.

C:\bza files\1999 minutes\9-2-99